criminal tendencies. As a police constable he had imprudently chosen such a companion. He had been in the police force for some fifteen years without any blemish. This is his first conviction. In view of his clean record and this being his only known lapse into crime I consider that the sentence is a little harsh. Also with this conviction he would have lost certain benefits. I would therefore allow his appeal against sentence to the extent that his sentence is reduced to 12 months' imprisonment. In both cases the sentences are to be calculated from the date they both served their sentences.

First appellant's appeal dismissed. Second appellant's appeal against conviction dismissed; sentence reduced.

LAU CHUO KIEW v. HII CHEE SOON

[A.C.J. (Lee Hun Hoe J.) October 18, 1965]

[Sibu — Civil Appeal No. 11 of 1965]

Contract — Hwei — Claim by one member against another.

The appellant and the respondent were both members of a "hwei". The head of the "hwei" was originally one of the defendants but she had been made a bankrupt and disappeared. The learned magistrate found that there was no privity of contract between the appellant and the respondent and he dismissed the appellant's claim against the respondent. The appellant appealed.

Held: in a "hwei" the agreement is between each member and the manager or head and not between the members themselves and therefore the learned magistrate was correct in holding that there was no privity of contract between the appellant and the respondent.

Cases referred to:—

(1) *Lee Pee Eng* v. *Ho Sin Leow* [1958] S.C.R. 18.

(2) *Kong Mee Chon* v. *Tang Hie Hiong* Sibu High Court Civil Appeal No. 7 of 1961.

CIVIL APPEAL.

Parties in person.

Lee Hun Hoe J.: This is an appeal against the decision of the court of small causes, Sibu.

Appellant and respondent were both members of a "hwei" of which one Nguon Siew Moi was the "head". Although I note that from the plaint the "head" was named as one of the defendants it seems that when the case came up for hearing the "head" had disappeared from the scene, presumably after being made a bankrupt appellant was not interested in her.

Reference was made to a case of similar nature heard by another magistrate in the court of small causes, Sibu (No. 14/65) in which appellant succeeded in her claim against a member of a "hwei". I need only say that the trial magistrate was not bound by that case. In a "hwei" the agreement in between each member and the manager or "head" and not between the members themselves: *Lee Pee Eng* v. *Ho Sin Leow.*[1] This was adopted by Lascelles J. in *Kong Mee Chon* v. *Tang Hie Hiong.*[2] The view is that in a "hwei" there is only one person who has anything to do with the running of it and he is the manager or "head". He is the person responsible for initiating the "hwei", collecting the subscriptions, receiving tenders and paying out to successful tenderer. He is in the supreme position of trust and in many instances he is held responsible if a member defaults.

Appellant contended that she had a document purported to be a promissory note which she stated she obtained from the "head". This document had on it a stamp of ten cents only. If it were her contention that the document is a promissory note then it should not have been admitted by reason of section 8 of the Stamp Ordinance for article 39 of the First Schedule of the said Ordinance a promissory note attracts a stamp duty of ten cents for every $100 or part thereof. In any event the document was admitted in the lower court and the trial magistrate decided the case on its merits. In effect he found that there was no privity of contract between the appellant and respondent and dismissed the claim. I have no reason to interfere with his finding. The appeal is dismissed with costs.

Appeal dismissed.

LEE KING HUNG v. LOH HUA YONG

[A.C.J. (Lee Hun Hoe J.) October 19, 1965]

[Sibu — Civil Appeal No. 8 of 1965]

Stamp Ordinance (Cap. 32) ss. 8 and 9 — Document improperly stamped — No objection taken at trial — Whether document promissory note or mere agreement.

This was an appeal against the decision of the magistrate and one of the grounds of appeal was that the learned magistrate erred in law in admitting a promissory note in evidence as the document was not properly stamped in accordance with the Stamp Ordinance. No objection was taken to the admission of the document at the trial.

Held: (1) if the document was improperly stamped, the appellate court must hold that it was wrongly admitted, despite the fact that no objection to its admission was raised at the trial;

(2) in this case the document was not a promissory note but merely an agreement or memorandum and it was therefore properly stamped.

Case referred to:—

(1) *Routledge* v. *McKay & Ors.* [1954] 1 All E.R. 855, 856.

CIVIL APPEAL.

George Seah Kim Seng for the appellant.

C. T. Wong for the respondent.

Lee Hun Hoe J.: Originally appellant appealed against the decision of the learned magistrate sitting in the district court, Sibu on four grounds but subsequently he abandoned one.

First, counsel for appellant contended that the trial was invalid in law because the first defendant having been made a party to the proceedings was not served nor was an order for substituted service made nor was first defendant struck out of the proceeding. Counsel for respondent who appeared in the court below pointed out that he applied for stay of proceedings against the first defendant when he learned that the first defendant had gone to Formosa but proceeded against appellant who is the mother of the first defendant. He said that the learned magistrate agreed to this course and proceeded with the hearing. It would appear from his judgment that the learned magistrate indeed dealt with the case as between appellant and respondent. I can see no reason why such a course should not be adopted bearing in mind that the simple procedures in the magistrates' courts have not been altered in anyway since Malaysia. Appellant therefore fails in her first ground.

Secondly, it was contended that the learned magistrate erred in law in admitting the promissory note in evidence as the said document was not properly stamped in accordance with the Stamp Ordinance. The First Schedule of the said Ordinance shows the prescribed stamp duty for each particular document. Article 39 under the said Schedule shows that promissory note attracts a stamp duty of ten cents for every $100 or part thereof. If the document happens to be a guarantee or letter of guarantee it comes under article 27 or article 30 respectively and attracts a stamp duty of $2. It is an undisputed fact that the document produced in the lower court had a fifty cents stamp on it only. Therefore if it comes under any of the three articles there is clearly an insufficiency of stamp duty.

Reference was made to sections 8 and 9 of the said Ordinance which read:—

"8. — (1) No document chargeable with duty hereunder shall be admissible in any civil judicial proceedings or be received by any Government officer as evidence of its purported transaction or function unless the same be stamped in accordance with this Ordinance:

Provided that a registered document shall be deemed to have been correctly stamped in accordance with this Ordinance notwithstanding any apparent discrepancy, and shall not be impugned on that account.

(2) No Government officer shall register, authenticate or give effect to any document unless he is satisfied that the proper stamp duty hereunder has been affixed thereto.

9. — (1) When an unstamped, or an insufficiently or improperly stamped, unregistered document is produced in evidence, the same shall be impounded by the court or officer before whom the same is produced, and shall only be redeemable on the proper stamps being affixed thereto and on payment of a penalty of ten times the amount of the stamp duty lacking:

Provided that, if the court or officer is satisfied that the discrepancy arose out of excusable circumstances, the whole or a portion of such penalty may be remitted.

(2) Any penalty paid under this section shall be recoverable by the person paying the same from the person liable under section 10 to pay the expense of the stamping."

It is clear that the learned magistrate's attention was not drawn to the above provisions. Unless a document is properly stamped or sufficient stamp duty is paid on a document under section 8 which appears to be mandatory such document becomes inadmissible. Counsel for respondent submitted that under section 9 this court has power to impound the document and impose penalty which respondent is prepared to meet. Even if this is done it would not assist the respondent in the present instance. The proper time to have this done is before the document is admitted when the defect is known.

In the lower court appellant was not represented by counsel and had not raised any objection to admission of the document. Counsel for respondent argued that no objection to its admission was raised in the lower court therefore appellant should not be allowed to do so in the appellate court. In this particular matter the duty of the appellate court is clear. In *Routledge* v. *McKay & Ors.*[1] an agreement which bore no stamp, was put in evidence in the County Court, and no point was raised that the document was not properly stamped. The point was eventually taken on appeal. Denning L.J. and Romer L.J. agreed with the view expressed by Evershed M.R. on this point:

"In my judgment, it is the duty of the Court of Appeal to pay regard to the provisions of the Stamp Act, 1891, s. 14(1), regarding the duty of the court to take notice of any omission or insufficiency of a document. This court cannot assume that there has been some decision by the court below merely because in that court an unstamped document has been admitted in evidence. On the facts of the present case I think that Exemption (3) to Agreement or Memorandum of Agreement in Schd. I of the Act, which reads:

'Agreement, letter, or memorandum made for or relating to the sale of any goods, wares, or merchandise',

applies. On the authorities that exemption, as I understand it, should be liberally interpreted. Therefore, in my opinion, there has been no infringement of the provisions of the Act."

I may point out that under article 2 of the First Schedule of the said Ordinance "agreement or contract not otherwise specifically charged with duty hereunder and not exempt as under" attracts a stamp duty of fifty cents only. The exemptions refer to certain agreements or contracts or memoranda which do not concern that document. Thus if the document produced in the lower court comes within article 2 then stamp duty was properly paid. The question therefore is what is the nature of that document. A promissory note is an unconditional promise in writing made by one person to another signed by the maker, engaging to pay on demand or at a fixed date or determinable future, a sum certain

in money to, or to the order of, a specified person or to bearer. It may be made by two or more persons who make themselves liable jointly or jointly and severally. It may contain a pledge of collateral security but it may not contain anything else. Promissory notes are negotiable or transferable in the same manner as bills of exchange. I doubt if the document produced in the lower court which is in Chinese is negotiable or transferable in the way it was written. Further the document mentions that "fearing that words from mouth bear no proof this is specially made as evidence". In my opinion the document is merely an agreement or memorandum. Consequently it comes under article 2 of the First Schedule and the proper stamp duty had been paid. I think the parties to the document realised the importance of having some sort of written evidence. However I do not know whether they had the Statute of Frauds in mind at the time. Appellant tried to deny any knowledge of the transaction but the learned magistrate did not believe her and had given his reasons for doing so. I have no doubt that the learned magistrate was right in his view that the appellant was privy to the agreement or memorandum. I therefore hold that the appellant fails in the second ground. In the light of what I said her third ground that the learned magistrate should have held that the promissory note was too ambiguous to be effective in law cannot succeed. In the result I dismiss the appeal with costs.

Appeal dismissed.

LEE LEE CHOON v. TENG AI CHENG

[A.C.J. (Lee Hun Hoe J.) October 19, 1965]

[Sibu — Civil Appeal No. 7 of 1965]

Landlord and tenant — Demand for rent — Rent lawfully due — Whether notice is defective if amount demanded is wrong.

The question raised in this appeal was whether the notice of demand for rent issued by the plaintiff was defective. The rent of the premises was $60 but the plaintiff demanded payment of $90, of which $30 was for the use of electricity and water. The learned magistrate held the demand was defective and dismissed the plaintiff's claim for possession.

Held: the word "demand" in section 15 of the Control of Rent Ordinance should be construed in its popular sense and not as a formal demand made in accordance with the strict rules of the common law and therefore the learned magistrate was wrong in holding that the notice of demand was defective.

Cases referred to:—

(1) *Leong Man Pan & Anor.* v. *President, Thong Saw Hong* [1952] M.L.J. 222.

(2) *Chew Geok Lin* v. *Pau Ping Kuong* [1965] 1 M.L.J. 25.

(3) *Cherian Varughese* v. *Aminah Radin Osman* [1958] M.L.J. 221.

CIVIL APPEAL.

George Seah Kim Seng for the appellant.

C. T. Wong for the respondent.

Lee Hun Hoe J.: This appeal against the decision of the learned magistrate sitting in the district court, Sibu raises one question only. That is whether the learned magistrate was wrong in law in holding that the notice of demand dated 21st July, 1964 was defective.

The learned magistrate referred to the said notice of demand in these words:—

> "The notice given by the plaintiff on 21st July 1964 is defective in as much as, to quote section 15(1)(a) of the Rent Control Ordinance, the rent *lawfully* due was, at that date, $60 and not $90 as demanded in it."

Both counsel did not dispute that the $90 demanded included $30 for the use of electricity and water. According to the definition of "rent" in the said Ordinance it does not include the use of electricity and water.

The relevant section of the said Ordinance reads:—

> "15. — (1) No order or judgment for the recovery of possession of any premises comprised in a tenancy shall be made or given except in the following cases, namely —
>
> (a) where at the date of the notice determining the tenancy given by the landlord, rent lawfully due was in arrear for twenty-one days or upwards after demand in writing and there was no tender thereof at or before such date."

Reference was made to *Leong Man Pan & Anor.* v. *President, Thong Saw Hong* (1) where the short judgment of Sir Charles Murray-Aynsley C.J. reads:—

> "This appeal raised a short point under the Control of Rent Ordinance, 1947, No. 25 of 1947. It is a question of the construction of section 14(1)(a). The learned district judge held that the word 'demand' had a restricted meaning, namely, that it had to satisfy the exacting requirements of the common law, as they are set out in *Crouch* v. *Patolfe*. The case from Perak of *Tan Yee Moh* v. *Varthamal* was cited in support. I do not think that that case applies. Here the basis of the claim to possession is termination of the tenancy by notice to quit. Apart from section 14 of this Ordinance that would be unanswerable. However, the Legislature has given in certain cases protection to the tenant in that an order for possession can only be given if certain conditions are fulfilled. Here the rent must be in arrear for twenty-one days after demand. I do not think that it is necessary to put a restrictive meaning upon the word 'demand'. A demand in solemn form as required by the common law is in point of fact so obsolete that I do not think that the Legislature intended such a proceeding. The object of the demand is to give the tenant a chance to pay and, of special importance, to let the tenant know where rent can be paid. If the tenant fails to take advantage of this the protection of the Ordinance ceases. For the purpose of this Ordinance rent unpaid after the demand is in arrear."

Certain confusion arose as to the exact amount arrears of rent in *Chew Geok Lin* v. *Pau Ping Kuong.* (2) I stated at page 26 as follows:—